

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2002

CORAM:

THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.No.20998 of 1994

1. Tamil Nadu Housing Board
Residents Welfare Association
Jothi Nagar, Arakkonam
N.A. Dt., by its Secretary
P.V.Sankaranarayanan.

2. R.C.Sundarajan
3. A.Natarajan
4. A.Subramani
5. A.Ramamurthy
6. S.S.Balasubramaniam
7. U.N.Jayavelu
8. V.Thiruvengadam
9. K.Amirtha
10. T.Adhivaraghan
11. S.Jayaraman
12. K.Annadurai
13. M.V.Muthappan
14. S.Kothandam
15. M.Venkatesan
16. K.Jaganatham
17. K.Dhanapalan
18. Tamilarasu
19. G.Manickam
20. S.Govindasamy
21. Poongavanam
22. T.K.Sivaprasad
23. Dr.Mohaideen
24. G.Jayaselan
25. V.Premavathy
26. M.Amudha
27. K.Manoharan
28. K.Sargunam
29. V.G.Vijayasundaram
30. C.Munusamy
31. C.Krishnamurthy
32. R.Vijayakumari
33. S.Radha Krishnan
34. Gowri Shankar

35. T.Subramani
36. R.Mohandoss
37. K.Kandasamy
38. A.Amirthalingam
39. A.Swarnalatha
40. S.Dhakshinamurthy
41. R.Elangovan
42. Nagarathinammal
43. P.M.Krishna Kumar
44. R.Kannan
45. S.Radhabai
46. Nagabushanam
47. H.Poorana Pragna Rao
48. B.Veeraraghavan
49. M.Kuppabai
50. Venkataraman
51. K.A.Khaleel
52. S.Raziabegam
53. T.Eahambaram
54. V.Radhakrishna .. Petitioners

versus

1. The Tamil Nadu Housing Board
by its Chairman, Nandanam
Madras-35.

2. The Executive Engineer
and Administrative Officer
Vellore Housing Unit
Vellore, N.A.A. District. .. Respondents

Petition under Article 226 of the Constitution of India for issue
of a writ of Mandamus as stated therein.

: ORDER

The prayer in this writ petition is for issue of a writ of
Mandamus to restrain the respondents herein from taking action claim
demanding any additional land cost over and above the price fixed under
the lease-cum-sale agreement and to direct the respondents to refund the
excess additional cost paid by the allottees/petitioners under the threat
of eviction order and to further direct the respondents to execute sale
deeds in favour of the allottees/petitioners whoever have paid entire
cost already fixed.

2. The first petitioner is the Tamil Nadu Housing Board
Residents Welfare Association, Jothi Nagar, Arakkonam. The other
petitioners, i.e., petitioners-2 to 54 are the allottees of flats under
the Housing Board Scheme. Under the layout plan of Arakkonam Mini

Neighbourhood Scheme in N.A.A. District, the scheme layout consisted of MIG and HIG Plots. The respondents published the scheme in July, 1987 on conditions of allotment and called for applications. The allotments were made during 1988 to 1990, and the allottees have paid the entire price towards land and building, cost development charges, cost of amenities etc., Due to the delay in handing over the buildings, the respondents have paid to some allottees, interest at the rate of 8% per annum.

3. The petitioners paid the land cost of Rs.23,000/- per ground for MIG plots and Rs.26,450/- for HIG plots. Flats of MIG and HIG were handed over to the petitioners after construction. Most of the members have paid their entire dues on the basis of the outright purchase and were demanding sale deeds.

4. According to them, they received a notice from the respondents to the effect that there was 35% increase in the cost of land for the plots abutting 80 ft. and 60 ft. roads and a 10% additional increased cost on land for the corner plots. There is no such demand or condition stipulated in the advertisement or in the lease-cum-sale agreement. The new demand of increase in 35% in the cost of land for the plots abutting 80 ft. and 60 ft. and a 10% additional increased cost on land for the corner plots is made now, as though monthly instalments are due from the allottees. Any such demand fixing 35% increase in the cost of land for the plots abutting 80 ft. and 60 ft. and a 10% additional increased cost on land for the corner plots is not valid. Therefore, the writ petition has been filed, as stated above.

5. No counter affidavit has been filed on behalf of respondents.

6. The learned counsel for the petitioners submitted that as per the conditions of allotment or the lease-cum-sale agreement, no such clause for collecting more amount for the plots abutting 80 ft. and 60 ft. and a 10% additional increased cost on land for the corner plots was made. All that was mentioned in the original allotment order which is found in the typed set is that the selling price of the house including cost of plot works out to Rs.1,56,000/-. The final price of the site due to the increase in cost of development charges and provisions of amenities etc., referred to in condition No.1 will be determined only after all suits filed for the determination of land cost have been disposed of and after all the land acquisition cases are finally settled and after the cost of amenities, development charges, etc., are finalised. Therefore, the cost that was informed to them was not a final cost and it has to be determined only after disposal of the land acquisition cases.

7. There is no material on record to come to the conclusion that all the land acquisition cases have been disposed of finally. It is not known why the Housing Board has not chosen to file a counter affidavit even though this writ petition has been pending for more than eight years. Even in one of the orders, it is seen that only after finally

determining the price by the Government, sale deed can be executed. In the circumstances, unless and until the Government fixes a final price, the sale deeds cannot be executed. Since the Housing Board has not filed a counter affidavit as to whether the Government has fixed a final price, this Court is unable to give a finding on the same. Only if Government announces the final price and the same is intimated to the petitioners and the said price had been paid by the petitioners, the sale deed can be executed.

8. The learned counsel for the petitioners submits that he is challenging the order relating to fixation of enhanced price of 35% for the plots abutting 80 ft. and 60 ft. roads and a 10% additional increased cost on land for the corner plots. In view of the fact that the prayer is not for the issue of a writ of Certiorari, that issue cannot be decided and hence, not decided. This writ petition has been pending for eight years and the petitioners have approached this Court for issue of a writ of Mandamus. The petitioners are at liberty to file an appropriate fresh writ petition.

9. The prayer in the writ petition is for issue of a writ of Mandamus to restrain the respondents herein from taking action claim demanding any additional land cost over and above the price fixed under the lease-cum-sale agreement and to direct the respondents to refund the excess additional cost paid by the allottees/petitioners under the threat of eviction order and to further direct the respondents to execute sale deeds in favour of the allottees/petitioners whoever have paid entire cost already fixed. In view of the fact that the allotment order itself contains a clause that the price stated therein was only a tentative price and final price will be fixed only after land acquisition cases were all over and it would depend on the compensation finally paid, the price stated in the lease-cum-sale agreement was not the final price. Therefore, the writ petitioners have no right to demand for the sale deed till the final price is fixed.

10. The petitioners may, if they so choose to file another writ petition, may file the same, challenging the
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additional costs on the ground abutting to 80 ft. Or 60 ft. or corner plot. The limitation shall not be taken into account for preferring such writ petition if such a writ petition is filed within a period of eight weeks from this date.

This writ petition is dismissed with the above observation.

Index : Yes

Internet: Yes

12.03.2002

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To

1. The Tamil Nadu Housing Board

by its Chairman, Nandanam
Madras-35.

2. The Executive Engineer
and Administrative Officer
Vellore Housing Unit
Vellore, N.A.A. District.

Sd/- Assistant Registrar

/True Copy/

Sub Assistant Registrar

W.P.No.20998 of 1994

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